

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0116

Sales/Use Tax

For the Period: 2002 through 2004

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ISSUE

I. Sales/Use Tax – Miscellaneous Items

Authority: IC § 6-8.1-5-1(b); 45 IAC 15-5-3(b); *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax Ct. 1999); IC § 6-8.1-5-4; 45 IAC 2.2-3-9

Taxpayer protests the proposed assessment of tax on miscellaneous items.

STATEMENT OF FACTS

The taxpayer's business includes providing secure transportation (e.g., armored vehicles), servicing automated teller machines, and other services. More facts will be provided as needed.

I. Sales/Use Tax – Miscellaneous Items

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC § 6-8.1-5-1(b) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b)(8).

45 IAC 15-5-3(b)(7) also notes that the “purpose of the hearing is to *clearly* establish the taxpayer’s *specific* objections to the assessment and *reasoning* for these objections.” (*Emphasis* added).

Also of import, although a property tax case, is *Hoogenboom-Nofziger v. State Bd. Of Tax Comm’rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999), a case in which the Indiana Tax Court explained that, “State Board hearing officers do not have the duty to make a taxpayer’s case.”

As noted to in the Statement of Facts, the taxpayer is a “provider of secure transportation and cash management services.” The Audit Report states:

[Taxpayer] has become a full-scale provider of secure logistics solutions. The major services offered by [Taxpayer] include armored car transportation, automated teller machines (“ATM”) servicing, currency and deposit processing (including “Cash Logistics” services), coin sorting and wrapping, arranging the secure air transportation of valuables (“Global Services”) and the deploying and servicing of safes and safe control devices....

Taxpayer protested numerous items, many of which have been resolved prior to the hearing. The resolved items were listed in the protest by the taxpayer as Exhibits A-E; Exhibit 1 (the vendor is “Company G” truck parts supplier, years 2002 and 2004); Exhibits 5 and 6; Exhibit 8; and Exhibit 10. The remaining issues are dealt with below. But before turning to the taxpayer’s protest, the Department notes that under IC 6-8.1-5-4 the taxpayer “must keep books and records,” which include “invoices, register tapes, receipts, and canceled checks.”

Food Service

Taxpayer claims that sales tax was paid. Unable to provide the original invoice, the taxpayer provided the Department with a computer screen print-out that taxpayer says “shows that 5 [percent] sales tax was charged.” As IC § 6-8.1-5-4 notes, records are defined as “all source documents” such as “invoices, register tapes, receipts, and canceled checks.” The taxpayer has failed to do this, and the screen print-out does not sufficiently establish that the tax was in fact paid. The taxpayer’s protest on this issue is denied.

Intercom System/Electronics

Taxpayer cites to “IAC 15 2.2-3-8” for the proposition that the contractor is “responsible for tax on materials.” The citation is incorrect, and the Department believes the taxpayer means to cite to 45 IAC 2.2-3-8. Sales and use tax issues involving contractors are often determined by whether the contract is a so-called “time and material contract” or a “lump-sum contract.”

45 IAC 2.2-3-9(d) states (*Emphasis* added):

Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

- (1) *Time and material contract*. He converts the construction material into realty on land he does not own and states separately the cost for the construction material and the cost for the labor and other charges (only the gross proceeds from the sale of the construction materials are subject to tax),

And 45 IAC 2.2-3-9(e) notes (*Emphasis added*):

Disposition subject to the use tax. With respect to construction materials a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner:

- (1) He converts the construction material into realty on land he owns and then sells the improved real estate;
- (2) He utilizes the construction material for his own benefit; or
- (3) *Lump sum contract*. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

It appears the contract was a time and material contract, with no tax charged. Taxpayer is denied.

Paper and Office Products

Again, the original invoice is not available and the taxpayer simply provided the Department with a screen print-out. The taxpayer is apparently arguing that the print-out establishes sales tax has been paid. As noted earlier, the screen print-outs are not sufficient under IC § 6-8.1-5-4. The taxpayer is denied.

Repair to a Door

As with the intercom system, the taxpayer argues that “contractors are responsible for tax on materials.” The Department again notes, 45 IAC 2.2-3-9(d)(1). The invoice differentiates the cost for labor, and the cost for materials. The taxpayer is denied.

Office Products

Taxpayer states that the original invoice could not be located, but provides a screen print-out that it claims shows use tax was accrued. As noted earlier, the print-outs are not sufficient documentation and the taxpayer is denied.

Heating and Air Conditioning

This is also an argument by the taxpayer involving a time and material contract. Taxpayer believes that the contractor is “responsible for tax on materials.” The Department again cites to 45 IAC 2.2-3-9(d)(1). The taxpayer is denied.

FINDING

The taxpayer’s protest is denied.

DP/BK/DK November 20, 2006